

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventor(s): Edson BEGLIOMINI et al.

Mail Stop Amendment

U.S. Application No.: 10/583,003

Examiner: Neil S. Levy

Filing or 371(c) Date: June 13, 2006

Confirmation No. 6373

Title: Fungicidal Mixtures Based on Carbamate Derivatives  
and Insecticides

Group Art Unit: 1615

**RESPONSE TO RESTRICTION REQUIREMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In complete response to the Restriction Requirement mailed February 23, 2010, Applicants provisionally elect Group I, claims 15-24, 26-30, 32-33, 35, 36, 38, and 39 drawn to crop protection. Applicants also elect the following species as required by the official action:

- a) T = CH for formula I
- b) R = halogen for formula I
- c) R<sub>1</sub> = haloalkyl for formula II
- d) fungi
- e) insects
- f) thiophanate-methyl

Applicants reserve the right to file divisional application(s) based on the non-elected claims.

Applicants respectfully **traverse** the Restriction Requirement.

The Examiner restricts the claims to Groups I-V because "seeds are not mixtures for crop protection" Office Action, page 2. Applicants disagree.

The Restriction is traversed for the following reasons. Applicants respectfully request an interview in the event the restriction requirement is maintained.

The Restriction is traversed for the following reasons. 37 C.F.R. § 1.475(a) states that unity of invention is fulfilled if there is a technical relationship among those inventions

involving *one or more* of the same or corresponding special technical features. The expression "special technical features" is defined as those technical features that define a contribution which each of the claimed inventions, *considered as a whole*, makes over the prior art.

As set forth in the Administrative Instructions under the PCT published in the PCT Gazette S-03/2001 (August 30, 2001):

(e) Combinations of Different Categories of Claims. *The method for determining unity of invention under Rule 13 shall be construed as permitting*, in particular, the inclusion of any one of the following combinations of claims of different categories in the same international application:

(i) *in addition to an independent claim for a given product*, an independent claim for a process specially adapted for the manufacture of the said product, and *an independent claim for a use of the said product...*

(Emphasis added). In addition, PCT Gazette S-03/2001 provides illustrative examples providing guidance for making a determination of unity of invention in particular cases.

Examples 1 and 15 provide:

*Example 1*

Claim 1: A method of manufacturing chemical substance X.

Claim 2: Substance X.

Claim 3: The use of substance X as an insecticide.

Unity exists between claims 1, 2 and 3. The special technical feature common to all the claims is substance X.

*Example 15*

Claim 1: Compound A.

Claim 2: An insecticide composition comprising compound A and a carrier.

Unity exists between claims 1 and 2. The special technical feature common to all the claims is compound A.

The present application includes claims directed to a mixture (claims 15-21), a claim directed to a composition comprising the mixture and a carrier (claim 22), a method of using the mixture (claims 23-31) or the composition comprising the mixture (claims 32-40) and a seed comprising the mixture (claim 41). Unity exists between claims 15-41 because all the claims share a special technical feature common to all the claims, namely the mixture of claim 15. The office action has not provided a prior art reference that destroys the technical feature common among all the claims. Accordingly, unity of invention exists between claims 15-41.

Moreover, as set forth in the National Requirements under Article 27(1) of the PCT,

- (1) No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations.

Accordingly, the requirements that apply for the international application should be the same as the requirements that apply for all contracting states, including the U.S. Applicants submit that there was no Unity of Invention objection made in the International Preliminary Report on Patentability in the international application corresponding to the instant U.S. national phase application. As such, under Article 27(1), there should likewise be no unity of invention objection or restriction requirement made in the instant application. Based on the foregoing, the Requirement for Restriction should be withdrawn because there is no lack of unity of invention.

Applicants urge the Examiner to withdraw the election of species requirements, especially in item d since electing between a target species from fungi, habitat, seeds, soil, area, material or spaces (see item d above) makes no technical sense because the target is always the fungi whereas the rest of items are places where the claimed composition might be applied. Similarly, in item e, food supply, habitat and breeding grounds and not species but are places where the claimed composition might be applied. Applicants respectfully request that the Examiner withdraw these requirements.

Based on the foregoing, Applicants respectfully request that the Restriction Requirement be reconsidered and withdrawn.

**The Director is hereby authorized to charge any appropriate fees that may be required by this paper, and to credit any overpayment, to Deposit Account No. 23-1925.**

If any questions remain, the Examiner is invited to contact the undersigned at the number given below.

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Respectfully submitted,

BRINKS HOFER GILSON & LIONE

Date: April 20, 2010

By: 

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